

(1878) 06 CAL CK 0013

Calcutta High Court

Case No: None

Hurrogobind Raha
and Others

APPELLANT

Vs

Ramrutno Dey and
Another

RESPONDENT

Date of Decision: June 28, 1878

Citation: (1879) ILR (Cal) 67

Hon'ble Judges: Richard Garth, C.J; McDonell, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

The Judge in the lower Appellate Court appears to have made a mistake in this case. He seems to have supposed that whether the defendants held by payment of rent or by performance of certain services, if they had held for a period of twenty or twenty-five years, the landlord could have no right to eject them.

2. If they had held the land by the performance of services, and they distinctly refused to perform those services, the consideration for their being allowed to continue in possession would wholly fail and, under these circumstances, we see no reason why they should not be ejected.

3. It was clearly the duty of the lower Appellate Court, upon the issues which were framed in this case and considering what the nature of the case was, to find, as a matter of fact upon the evidence whether the defendants held the land, as they say they did by payment of rent, or as a service tenure. Instead of deciding the case upon that issue, the lower Appellate Court seems to have been satisfied to leave that question in a state of uncertainty.

4. We are very much disposed to think that if the defendants held by a service tenure they could not acquire a right of occupancy. However, it is not necessary to decide that point on this occasion.

5. The Subordinate Judge has not done his duty in deciding the issues. The case must, therefore, go back to him for retrial. If he finds it necessary, for the proper determination of the question, to take further evidence, he will be at liberty to do so, the parties also being at liberty to adduce such further evidence as they may think fit, The costs must follow the result.